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 DENNIS MONTGOMERY and
 11 the MONTGOMERY FAMILY TRUST and
 counterdefendants EDRA BLIXSETH and
 12 OPSRING LLC

13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 DENNIS MONTGOMERY and the
 MONTGOMERY FAMILY TRUST,

16 Plaintiffs,

17 vs.

18 ETREPPID TECHNOLOGIES, LLC, WARREN
 19 TREPP, and the UNITED STATES
 DEPARTMENT OF DEFENSE,

20 Defendants.
 21

22 AND RELATED CASES.
 23

) Case No. 3:06-CV-00056-PMP-VPC
) BASE FILE

) (Consolidated with Case No. 3:06-CV-
) 00145-PMP-VPC)

) **MONTGOMERY PARTIES' BRIEF RE**
) **LIMITATION ON SUBJECT MATTER**
) **OF CORRESPONDENCE REQUIRED**
) **TO BE PRODUCED PURSUANT TO**
) **ETREPPID'S REQUEST NO. 26 IN**
) **REQUEST FOR PRODUCTION, SET**
) **TWO**

24
 25 At the June 10, 2008 hearing on the Court's order to show cause ("OSC"), counsel for
 26 Dennis Montgomery ("Montgomery"), and the Montgomery Family Trust (jointly with
 27 Montgomery, the "Montgomery Parties") stated that it was the Montgomery Parties' understanding
 28 that the Court had limited the scope of the documents that the Montgomery Parties were required to

1 produce in response to Request No. 26 ("Request No. 26") in the Second Set of Requests for
2 Production propounded by eTreppid Technologies LLC and Warren Trepp (jointly, "eTreppid").
3 Based on argument and the ruling made by the Court at a February 21, 2008 hearing on a motion
4 by eTreppid to compel discovery, the Montgomery Parties understand that the Court limited the
5 scope of the correspondence they are required to produced in response to Request No. 26 to
6 correspondence concerning certain technology. [Transcript of June 10, 2008 hearing at 119:18-
7 120:1.] eTreppid, on the other hand, takes the position that no limitation was ever imposed on the
8 scope of the correspondence that is the subject of Request No. 26.

9 The Montgomery Parties have reviewed the transcript of the February 21, 2008 hearing
10 where these issues were discussed and resolved and respectfully submit that the transcript of that
11 hearing appears to support the understanding of the Montgomery Parties. Because this issue is
12 germane to the OSC hearing, the Montgomery Parties submit this memorandum so the issue finally
13 can be resolved.

14 Request No. 26 states:

15 Please produce any and all documents, including but not limited to
16 correspondence, emails (in native format), calendar notes, journal entries, or
17 phone messages memorializing any communication between you or anyone acting
18 on your behalf and Edra Blixseth, OpSpring, Inc., AziMyth, Inc. Michael
19 Sandoval, or Atigeo, Inc.

20 [See Ex. E to Declaration of Jerry Snyder filed February 15, 2008, Request No. 26 at p. 10 of 91
21 (Docket # 433-3).]

22 While the language of Request No. 26 does not limit the requested correspondence to that
23 involving a particular subject matter, this Court, at the February 21, 2008 hearing, ruled that
24 Request No. 26 should be deemed to seek correspondence concerning certain types of technology.
25 Oral argument by eTreppid's counsel and the Court's subsequent ruling on the record following
26 counsel's argument makes this limitation on Request No. 26 clear.

27 At the February 21 hearing, eTreppid's counsel urged that Request No. 26 *not* be limited to
28 particular technology. eTreppid's counsel argued:

MR. SNYDER: And then in request number 26, we would, we request
correspondence, e-mails, communication, et cetera, between Dennis Montgomery
and those entities; Blixseth, Opspring, Azimyth, et cetera. This is one I don't

1 want to limit it to things discussing the particular technology, because those
 2 discussions might encompass a wide variety, or those communications might not
 3 directly discuss the technology, but might certainly be relevant to other issues
 related to misappropriation, or related to our other claims here.

4 [Ex. 1 (Transcript of 2/21/08 Hearing) to Request for Judicial Notice filed in Support of
 5 Montgomery Parties' Opposition to eTreppid's Motion to Compel (Docket # 681) at 103:14-23.]

6 The Court rejected the argument of eTreppid's counsel that Request No. 26 should not be
 7 limited to certain technology. The Court appeared to rule that the correspondence produced in
 8 Request No. 26 could be limited by subject matter, specifically, to correspondence relating to
 9 "technology arising out of object detection, data compression, pattern recognition, object tracking,
 10 and anomaly detection" in response to Request No. 26 would be acceptable. As the Court stated at
 11 the hearing:

12 Then, with respect to numbers, requests -- this is second set for requests of
 13 production, request 24, 25, 26, and 27, the Montgomery parties will answer
 requests for production number 24 as is.

14 As it relates to request for production relates to docket, request for production 25,
 15 26, and 27, that -- those document production requests which, say, for example, 25
 16 says, "Please provide every contract of any kind, including but not limited to any
 17 technology, licensing agreements, employment agreements, et cetera, between you,
 18 on the one hand, and then that counter-defendants, additional counter-defendant's
 name." It will include this limitation: Technology, the term technology is limited to
 technology arising out of object detection, data compression, pattern recognition,
 object tracking, and anomaly detection.

19 **And the same limitations will be imposed as to requests for production 26 and**
 20 **27.**

21 [*Id.* at 115:14-116:5 (emphasis added).]

22 Request No. 26 does not use the term "technology." Similarly, Request No. 27 in
 23 eTreppid's Second Request for Production does not use this term.¹ [See Ex. E to Declaration of
 24 Jerry Snyder filed February 15, 2008, Request No. 27 at p. 10 of 91 (Docket # 433-3).] Yet, the

25 ¹ Request No. 27 states: "Please produce any and all documents, including but not limited to
 26 correspondence, emails (in native format), calendar notes, journal entries, power point
 27 presentations, marketing materials, or phone messages memorializing any communication between
 28 you or anyone acting on your behalf and any customer or prospective customer of OpSpring, Inc.,
 or AziMyth." See Ex. E to Declaration of Jerry Snyder filed February 15, 2008, Request No. 27 at
 p. 10 of 91 (Docket # 433-3).

1 Court specifically referred to Request Nos. 26 and 27 when it stated that the “the same limitations”
2 would refer to these particular document requests.

3 In order to give meaning and effect to the Court’s ruling that the “same limitations will be
4 imposed as to requests for production 26 and 27,” the Court’s ruling must logically be construed as
5 limiting the correspondence required to be produced in response to Request No. 26 and 27 to
6 correspondence involving “technology arising out of object detection, data compression, pattern
7 recognition, object tracking, and anomaly detection.” Otherwise, the Court’s directive that “the
8 same limitations”—i.e, the subject matter limitation involving these technologies—“will be
9 imposed as to requests for production 26 and 27” would not make sense.

10
11 Dated: June 23, 2008

Respectfully submitted,

12 LINER YANKELEVITZ
13 SUNSHINE & REGENSTREIF LLP

14 By: _____/s/
15 Deborah A. Klar

16 Attorneys for Plaintiffs DENNIS
17 MONTGOMERY and the
18 MONTGOMERY FAMILY TRUST, and
19 Counterdefendants OPSRING LLC and
20 EDRA BLIXSETH
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Law Offices Of Liner Yankelevitz Sunshine & Regenstreif LLP, and that on **June 23, 2008**, I caused to be served the within document described as **MONTGOMERY PARTIES' BRIEF RE LIMITATION ON SUBJECT MATTER OF CORRESPONDENCE REQUIRED TO BE PRODUCED PURSUANT TO ETREPPID'S REQUEST NO. 26 IN REQUEST FOR PRODUCTION, SET TWO** on the interested parties in this action as stated below:

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☒ **[ELECTRONIC]** By filing the document(s) electronically with the U.S. District Court and therefore the court's computer system has electronically delivered a copy of the foregoing document(s) to the persons listed above at their respective email address.

[Federal] I declare that I am employed in the offices of a member of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

1 I declare under penalty of perjury under the laws of the State of California and
2 the United States of America that the foregoing is true and correct.

3 Executed on June 23, 2008, at San Francisco, California.

4 Sklar K. Toy
5 (Type or print name)


6 (Signature)